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Lowell W. Paxson / Chairman

February 11, 2000

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

William E. Kennard  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Room 8B-201H  
Washington, DC 20554

Re: CS Docket No. 98-120  
MM Docket No. 99-360

Dear Chairman Kennard:

Paxson Communications Corporation ("Paxson"), the owner of the largest broadcast television group in the United States and the creator of the seventh and newest over-the-air broadcast network-PAX TV, has a vital interest in the current deliberations of the Federal Communications Commission ("FCC") concerning mandatory carriage rights for television broadcast signals (CS Docket No. 98-120) and the public interest obligations of television broadcasters in the digital world (MM Docket No. 99-360). Paxson filed comments with the FCC on October 13, 1998 and on December 22, 1998 urging the FCC to act swiftly to implement digital must carry and Paxson intends to submit formal comments to the FCC regarding digital public interest obligations. These are matters of great importance to my company.

With regard to carriage of digital signals, I would note that the existing must carry rules require multi-channel video programming distributors to carry the entire 6 MHz of spectrum (either analog or digital) of all local commercial television stations (subject to channel capacity, signal strength and copyright limitations). The Communications Act clearly states that:

*ADVANCED TELEVISION. At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems NECESSARY TO ENSURE CABLE CARRIAGE OF SUCH BROADCAST SIGNALS OF LOCAL COMMERCIAL TELEVISION STATIONS which have been changed to conform with such modified standards.*

We have proposed that television stations have the right to select either their primary analog or digital signal for carriage and, as capacity expands, television stations can take full advantage of



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their must carry rights to seek carriage for multi-channel programming within the existing must carry rules.

On digital public interest obligations, I have carefully reviewed the FCC's Notice of Inquiry in MM Docket No. 99-360 and have reviewed and analyzed the Final Report of the Advisory Committee on Public Interest Obligations of Digital Broadcasters submitted to the FCC in December, 1998 (the "Gore Commission" Report).

It is clear to me that television broadcasters are at a critical juncture with regard to their business opportunities and their public service obligations resulting from the transition from analog to digital. The intersection of the FCC's pending inquiries into digital must carry and digital public interest obligations provides a unique opportunity to fashion a solution to insure broadcasters' survival in the digital world while reaffirming the bedrock public interest commitment of the over-the-air broadcasting industry. As the Gore Commission Report noted:

*The foundation of the American system of broadcasting is that Congress placed the basic trust and responsibility for all matters broadcast to the public in the hands of the station licensee.*

It is axiomatic that television licensees are required to program their stations in the public interest, convenience and necessity in order to serve the needs of their service areas. It is equally clear that the FCC's regulatory powers are limited by the First Amendment and Section 326 of the Communications Act. These sometimes competing interests form the foundation of the American system of broadcasting which places programming responsibility and discretion in the hands of the individual licensees subject only to broad regulatory overview by the FCC. I believe that this structure provides the opportunity to create a private benefit – public incentive model that can drive the development of digital television.

### **THE PROPOSAL**

I urge the FCC to adopt a procedure where, in return for a licensee's voluntary acceptance of a Public Interest Code of Conduct, the FCC will provide certain economic incentives including renewal expectancy and mandatory carriage of the licensee's digital signal and its contents.

Under my plan, broadcasters, would establish a written Public Interest Code of Conduct which licensees voluntarily accepting the Code would agree to follow. Licensees certifying in writing to the FCC their adoption of the Code of Conduct would be required, at renewal time, to demonstrate that they had, in fact, adhered to the Code. As the Gore Commission noted:



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*In order to promote the goals of a deliberative democracy, government should rely whenever possible on the least intrusive means, by fostering disclosure of information and voluntary self regulation and by using economic incentives.*

*[H]aving the broadcast industry adopt a strong set of voluntary standards of conduct...would be a highly desirable step toward creating a digital world meeting the needs and interest of the American public.*

The economic incentives for licensees to voluntarily adopt the Code of Conduct would be two-fold. First, there would be a presumption of renewal expectancy based upon demonstrating compliance with the Code of Conduct which would be prima facie evidence of compliance with Section 310(k) of the Communications Act and; second, licensees adopting the Code of Conduct would qualify for mandatory carriage of their digital television signal pursuant to Section 614 of the Communications Act. Adoption of the Code of Conduct would not be available to those licensees choosing to utilize retransmission consent in their negotiations with multi-channel programming distributors.

The Gore Commission recommended that:

*[A]ppropriate governmental authorities adopt ways, including digital "must carry" by cable operators, to expedite the widespread availability of digital broadcast television to the public.*

In separate statements of Gore Commission members it was noted that:

*Public interest obligations on broadcasters are meaningless unless broadcasting remains a free and ubiquitous video programming service. . . .Broadcast channels that are not universally received cannot remain a free service.*

I believe that the Code of Conduct approach would recognize licensees' public interest obligations, and provide that the FCC, at renewal time, would be supplied with information the licensee deems appropriate to establish compliance with the Code and fulfill the licensee's obligation to operate in the public interest.

### **THE CODE**

The basic ingredients of the Public Interest Code of Conduct would include the following:



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- Television stations have been given the responsibility under the Communications Act to serve the public interest, convenience and necessity of their service areas and to use their discretion in determining how to fulfill such responsibilities.
- Television stations will provide 5 minutes per night (between the hours of 5:00pm and 11:35pm) in the 30 days before an election for political discourse and for candidates to reach the voters. The stations will choose the candidates and races, (federal, state or local), to receive such coverage and the stations will have the discretion to choose the formats, although there will be a minimum 1 minute duration for the candidates on-screen and an audio minimum of 50% of the airtime.
- Television stations will provide programming that contains information explaining our citizenship by presenting, designing and structuring information so that it is accessible, available, understandable and free.
- Television stations will provide programming that reflects the diverse interests within their communities including the cultural, the heritage, the individuality, and demographics of the communities and will provide programming that, in the station's discretion, addresses all elements of its coverage area.
- Television stations' service to their communities includes contributions to political discourse, public service announcements, children's, religious, educational and cultural programming as well as involvement in specific community activities.
- Television stations choosing to multiplex their DTV signals will have the flexibility to determine the appropriate level and scheduling of such public interest programming and to determine whether such programming will be aired on one or more of their digital channels.
- Television stations voluntarily agreeing to abide by the Public Interest Code of Conduct will have full mandatory carriage rights applicable to multi-channel video programming distributors pursuant to the Communications Act. Such mandatory carriage will encompass the licensee's free over-the-air, unduplicated multicast program services and any direct ancillary services contained in the licensee's signal.

As the Gore Commission noted in its report to the FCC, it is imperative to preserve the benefits of free over-the air-broadcast television and, in a digital world, this means a combination of voluntary licensee action and governmental-provided digital must carry. My proposal would help preserve the system of free over-the-air broadcasting and would do so by honoring the First Amendment rights of broadcasters, fulfilling the need for public interest regulation by the FCC and requiring that broadcaster's digital signals reach their entire communities.



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I respectfully request that the Commission consider this proposal as one that furthers the public interest while ensuring stability and certainty for the broadcast industry in the new digital age. I look forward to discussing this proposal with each of you during the week of February 21, 2000 and my counsel in Washington, D.C. Dow, Lohnes & Albertson, will be contacting your offices to arrange such meetings.

Very truly yours,

Lowell W. Paxson  
Chairman  
Paxson Communications Corporation

cc: Commissioner Susan Ness  
Commissioner Harold Furchtgott-Roth  
Commissioner Michael K. Powell  
Commissioner Gloria Tristani

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